D.B. CIVIL SPECIAL APPEAL (W) NO.410/2007

Ram Ratan

Vs.

Rameshwar Lal and Ors.

DATE OF ORDER :: 18.5.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. MS Panwar, for the appellant.
Mr. RK Thanvi, for the respondents.

Having heard learned counsel for the parties, we find no merit in this appeal. The suit for eviction was filed in the year 1988 and the written statement was submitted by the present petitioner – appellant in the year 1991. The suit had been filed for bonafide personal necessity of the plaintiff-respondent.

The amendment application was moved while the evidence was going on and the witnesses of the plaintiff have already been cross-examined seeking to amend the written statement alleging that an agreement to sale had come between the parties on 27.9.1992 and in pursuance of which part payment was paid to the plaintiff by 27.9.1995. It was further stated that in respect of the agreement to sale dated 27.9.1992 the defendant in the present proceedings had filed a civil suit for specific performance of the agreement only on

18.3.2005 almost 13 years after the date of agreement. When on 25.7.2005, the vendor landlord in the written statement admitted that agreement to sale had taken place on 27.9.1992 but denied that the buyer (present appellant) was at any time ready and willing to carry out his part of contract. The defendant -appellant in the present case moved on application on 28.4.2006 after almost 9 months of filing of written statement to take these facts on record.

The learned trial Judge has rejected the application as highly belated and not bonafide.

The writ petition preferred against the aforesaid order of the trial Judge dtd. 26.8.2006 was dismissed by the learned Single Judge holding that there was no error in exercise of discretion in rejecting the application.

In the circumstances, we are satisfied that the application to amend written statement at this stage is an attempt to bring on record the facts which were in the knowledge of the defendant in the eviction suit since 1992. Filing of the suit for specific performance of agreement of the year 1992 after about 13 years only in 2005 betrays lack of bonafide on the part of the defendant and his intention to prolong the suit proceedings on that ground.

Accordingly, the appeal is dismissed with costs which we quantify at Rs.2,000/-.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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